FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITIONS NO. 2448 OF 2006

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM : B.P.DHARMADHIKARI, J.
DATED : MARCH 01, 2007

Heard Advocate Shri Mardikar for petitioner, Advocate Shri Anand Jaiswal for respondent No.3 and learned A.G.P. For respondents No.1 and 2.

The authorities under the Mamlatdar's Court Act have concurrently granted way to present respondent No.3 by Northern dhura of the field of present petitioner. The learned counsel for petitioner has contended that there is already a road in existence which starts from North-west corner of his field and goes towards south and then turns towards East. He states that this road is being used by all other cultivators including respondent No.3. He points out that spot inspection report is defective and petitioner, therefore, made an application for incorporating

certain additional aspects in it. It is argued that these additional aspects are not properly evaluated and separately no evidence has been recorded while granting way as claimed to respondent No.3. The way has been granted by observing that it is convenient for respondent No.3.

Advocate Shri Jaiswal contends that the order has been passed after the order of remand and hence, the authorities have taken overall view of the matter.

Learned AGP contends that already the evidence was recorded and in view of that evidence, spot inspection was conducted and on the basis of spot inspection report, the order has been passed.

However, it appears that after remand, the earlier evidence could not have been used because the remand order expressly required parties to lead fresh evidence. In these circumstances, unless and until there was fresh evidence pointing out user of the road as claimed by respondent No.3 from Northern dhura of the filed of petitioner such way could not have been granted. The impugned orders are, therefore, unsustainable as they show total non-application of mind and hence, the same are accordingly hereby

quashed and set aside. The matter is restored back to the file of respondent No.2 for giving opportunity to respondent No.3 and petitioner to lead evidence and thereafter to decide the controversy in accordance with law.

As the matter is being sent back again, respondent No.2 shall decide the matter afresh as early as possible and in any case within a period of six months from the date of communication of this order to it.

Writ petition is disposed of. Rule accordingly. No costs.

Civil Application No. 7530 of 2006.

Heard.

Application is formal. Hence, it is allowed.

Necessary amendment be carried out immediately.

JUDGE

Diwale